IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.248 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO.249 OF 2005

1. M/s Mega Packs & Anr ...Petitioners

V/s

BASF India Limited & Ors. ...Respondents.

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Mr. P.L. Bhujbal for the petitioners in both the above Writ Petitions.

Mr. A.P. Mundargi with Mr. Vishal Maheshwari i/b M/s N. Shah & Himayatullah for respondent No.1 in both the above Writ Petitions.

Mr. D.P. Adsule, APP for the State.

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CORAM: V.M.KANADE,J.
DATE: 25th April 2005

P.C.:

1. Heard the learned Counsel for the petitioners and the learned counsel for respondent No.1.

2. Petitioners in this petition submit that the cheques in question were issued by them in 2001 and the stop payment instructions were given to the Bank in 2001 itself by letter dated 11/6/2001. Similarly stop payment instructions were also given by letter dated 4/7/2001, 8/6/2001. The stop payment instructions were given to the Branch Manager on 11/6/2001. It is submitted that, therefore, the aforesaid cheques cannot be construed as cheques and,

at the most, they could be treated as Bills of Exchange and, therefore, the petitioners are not liable to be prosecuted under the provisions of section 138 of the Negotiable Instruments Act. It is submitted that the cheques were presented for encashment by respondent No.1 to their Bankers on 19/6/2004 i.e. almost after three years after the stop payment instructions were given to the Bank and to the complainant. The learned Counsel appearing on behalf of the petitioners invited my attention to the various exhibits annexed to the petitions in support of the said submissions.

3. The learned Counsel appearing on behalf of the respondent No.1, however, vehemently opposed the said submissions made by the learned counsel for the petitioners. He submits that this fact regarding intimation of stop payment which was given to the Bank and to the complainant is seriously disputed. He submitted that this fact will have to be proved by the petitioners in the Criminal Case which is pending against them.

4. It is not possible to accept the submissions made by the learned Counsel appearing for the petitioners. The question as to whether, in fact, stop payment

instructions were given to the Bank and whether such stop payment instructions were, in fact, given to the complainant in 2001 is a question of fact which will have to be proved during the trial and it is not possible to give any finding on this aspect at this stage while exercising powers under section 482 of the Criminal Procedure Code.

5. However, all the questions raised in these Petitions are kept open. The Trial Court to give proper opportunity to both the parties to lead evidence and, thereafter, decide all the questions including the questions raised in this petition on merits and in accordance with law. Trial Court to exempt the witnesses if any request is so made in that behalf.

V.M. KANADE, J.